

## Message Text

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ACTION ARA-14

INFO OCT-01 ISO-00 IO-13 DHA-05 CIAE-00 DODE-00 PM-05  
H-01 INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01  
SP-02 SS-15 USIA-06 ACDA-07 OMB-01 TRSE-00 AID-05  
IGA-02 EB-08 SIL-01 LAB-04 SCA-01 VO-03 /111 W  
-----033657 241444Z /41

P R 211316Z AUG 77  
FM AMEMBASSY SANTIAGO  
TO SECSTATE WASHDC PRIORITY 6208  
INFO AMEMBASSY ASUNCION  
AMEMBASSY BRASILIA  
AMEMBASSY BUENOS AIRES  
AMEMBASSY LA PAZ  
AMEMBASSY LIMA  
AMEMBASSY MONTEVIDEO  
AMEMBASSY QUITO

C O N F I D E N T I A L SECTION 1 OF 2 SANTIAGO 6957

E.O. 11652: GDS  
TAGS: SHUM PINT PGOV CI  
SUBJECT: CHILE PREPARES GROUND FOR NEW EMERGENCY POWERS CATEGORY

REF: A) 76 SANTIAGO A-146, B) SANTIAGO 6818, C) SANTIAGO 2022

1. SUMMARY: THE GOC HAS BEGUN TO PAVE THE WAY FOR  
LIFTING THE STATE OF SIEGE BY EXTENDING ITS PREVENTIVE  
DETENTION AND SOME OTHER STATE OF SIEGE POWERS TO A  
WIDER RANGE OF EMERGENCY CONDITIONS. END SUMMARY.

2. BACKGROUND. PROVISION FOR EMERGENCY POWER RULE  
BY THE CHILEAN EXECUTIVE DATES BACK TO INDEPENDENCE.  
LAW 12,927 OF 1958 DEFINES SOME CATEGORIES OF EMERGENCY  
RULE AND SOME OF THE EXCEPTIONAL POWERS WHICH CAN BE  
GRANTED THE EXECUTIVE IN EACH STAGE, BUT THE DRAFTERS  
DID NOT FORESEE A NEED FOR PREVENTIVE DETENTION IN  
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THE FACE OF LESSER EMERGENCIES THAN STATE OF WAR OR  
SIEGE. CONSTITUTIONAL ACT 4 OF 1976 (SEE REF A)  
BROADLY REDEFINED CATEGORIES OF NATIONAL EMERGENCY:  
ITS MAJOR INNOVATION WAS THE CONCEPT OF A NATIONAL  
CRISIS IN THE FACE OF LATENT SUBVERSION - I.E. DANGER  
TO THE STATE NOT INVOLVING INSURRECTION. IMPLEMENTING  
REGULATIONS WERE TO FOLLOW IN SIX MONTHS. AS REPORTED

REF C, THE GOC MISSED THIS DEADLINE AND, IN MARCH, GAVE ITSELF ANOTHER SIX MONTHS. THE DEADLINE IS NOW MID-SEPTEMBER.

3. PRESIDENT PINOCHET IS EXPECTED TO ANNOUNCE THE END OF THE STATE OF SIEGE DURING HIS SEPTEMBER 11 COUP ANNIVERSARY ADDRESS TO THE NATION. INDICATIONS ARE THAT HE WILL REPLACE IT WITH THE NEW EMERGENCY CONDITION "STATE OF DEFENSE AGAINST SUBVERSION".

4. DECREE LAW 1877. DECREE LAW (DL) 1877 OF AUGUST 12, PUBLISHED SIMULTANEOUSLY WITH THE DL'S ABOLISHING DINA AND CREATING THE NEW NATIONAL INFORMATION CENTER -- CNI (REF B), BEGINS THE PROCESS OF MAKING POWERS HERETOFORE IN EFFECT ONLY FOR STATES OF SIEGE OR WAR OPERATIVE DURING ANY "STATE OF EMERGENCY". ARTICLE ONE OF THE NEW DECREE AUTHORIZES THE PRESIDENT TO DETAIN PEOPLE FOR UP TO FIVE DAYS IN THEIR OWN HOMES OR IN PLACES WHICH ARE NOT COMMON JAILS DURING ANY PERIOD OF EMERGENCY. ARTICLE TWO OF DL 1877 SAYS THAT "REFERENCES TO STATE OF SIEGE IN DL'S 81 AND 198 AND ARTICLE ONE OF DL 1009 ARE DECLARED TO BE UNDERSTOOD TO BE APPLICABLE DURING THE STATE OF EMERGENCY REGULATED BY LAW 12,927 OF 1958".

5. THUS, UNDER THE REDUCED STATE OF EMERGENCY  
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PRESUMABLY THE GOC COULD STILL:

-- EXPEL FOREIGNERS AND CITIZENS FOR NATIONAL SECURITY REASONS. (ARTICLE TWO OF DL 81);

-- REQUIRE PRIOR APPROVAL FOR LABOR UNION MEETINGS WHICH, EVEN IF APPROVED, CAN ONLY BE OF AN "INFORMATIONAL CHARACTER" OR DEAL WITH ADMINISTRATIVE MATTERS-- THUS EXCLUDING ELECTIONS OR SUBSTANTIVE DIALOGUE BETWEEN UNION LEADERS AND RANK AND FILE. (TRANSITORY ARTICLE FOUR OF DL 198);

-- USE "SPECIALIZED AGENCIES WATCHING OVER THE NORMAL UNFOLDING OF NATIONAL ACTIVITY AND MAINTENANCE OF THE CONSTITUTED ORDER" TO MAKE PREVENTIVE DETENTIONS "IN THE EXERCISE OF THEIR OWN POWERS" FOR UP TO FIVE DAYS (EXTENDED TO 10 DAYS BY CONSTITUTIONAL ACT 4), BUT WITH THE REQUIREMENT THAT FAMILIES BE NOTIFIED WITHIN 48 HOURS. (ARTICLE ONE OF DL 1009). (COMMENT: THE DL 1009 REFERENCE TO "SPECIALIZED AGENCIES"

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IGA-02 EB-08 SIL-01 LAB-04 SCA-01 VO-03 /111 W  
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P R 211316Z AUG 77  
FM AMEMBASSY SANTIAGO  
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C O N F I D E N T I A L SECTION 2 OF 2 SANTIAGO 6957

PARA 4) BEARS CLOSE WATCHING. THE DECREE LAW  
CREATING CNI (REF B) CONTAINS VERY SIMILAR  
LANGUAGE. WHEN WE POINTED OUT THIS COINCIDENCE TO A  
GOC LEGAL EXPERT, HE REPLIED THAT CNI HAS NO AUTHORITY  
TO DETAIN "IN THE EXERCISE OF ITS OWN POWERS." AS NOTED IN REF  
B, HOWEVER, CNI CAN DETAIN ON AUTHORITY OF A MILITARY JUDGE'S  
WARRANT IN CASES OF SUSPECTED ARMS CONTROL VIOLATIONS OR  
SUSPECTED PARTICIPATION IN EFFORTS TO VIOLENTLY  
OVERTHROW THE GOVERNMENT.

6. COMMENT: DL 1877 BEGINS THE PROCESS OF SPELL-  
ING OUT THE POWERS THE GOC CAN DRAW UPON WHEN IT  
MOVES TO LESSER LEVELS OF EMERGENCY POWER. THE  
FIRST IMPRESSION IS THAT THE GOC INTENDS TO RETAIN  
THE MORE IMPORTANT PARTS OF ITS STATE OF SIEGE  
AUTHORITY. WE EXPECT FURTHER ENLIGHTENMENT FROM  
THE REGULATIONS TO BE ISSUED BY MID-SEPTEMBER.  
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7. THERE MAY BE A BRIGHTER SIDE TO DL 1877 AND THE PROSPECTIVE IMPLEMENTING REGULATIONS FOR A REDUCED STATE OF EMERGENCY POWERS. AS THINGS NOW STAND, STATE OF SIEGE POWER, BECAUSE OF ITS LONG TRADITION, IS SO DEEPLY AND WIDELY IMBEDDED IN NATIONAL JURISPRUDENCE THAT IT IS DIFFICULT EVEN FOR CHILEAN LAWYERS TO DETERMINE THE FULL SCOPE OF THE GOC'S CURRENT AUTHORITY - AND THUS IT IS DIFFICULT TO PROVE THAT THE GOC IS NOT FOLLOWING ITS OWN LAWS. THE COMBINATION OF A REDUCED STATE OF EMERGENCY POWER WITH CLEARLY DEFINED ATTRIBUTES COULD FACILITATE LEGAL DEFENSE AND JUDICIAL PROCEDURES.

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